HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITION No.23102 OF 2003

Dated 14-12-2005

Between :

Mr. Marri Krishna Reddy, son of Sri Narayan Reddy, aged about 55 years, Occupation : Agriculture, resident of Velmela village, Mandal Ramachandrapuram, Medak District.

….Petitioner.

And :

1. Mr. Rajyam Mahipal Goud, son of Sri Eshwaraiah Goud, aged about 42 years, Occupation : Agriculture, resident of Velmela village, Mandal Ramachandrapuram, Medak District and others.

…Respondents.

ORDER :

This writ petition has been filed by the unsuccessful election petitioner in O.P.No.7 of 2001 on the file of the Election Tribunal-cum-Principal Junior Civil Judge Court, Sanga Reddy assailing the order dated 17-10-2003 whereby the learned Election Tribunal dismissed the application filed under section 233 of A.P. Panchayat Raj Act, 1994.

2. The petitioner and 1st respondent contested for the post of Sarpanch of Velmela village. Nomination papers were filed on 04-08-2001 and election was held on 20-08-2001 and the 1st respondent-Rajyam Mahipal Goud was declared as duly elected as Sarpanch of Velmela Gram Panchayat. His election has been challenged by the petitioner by presenting election petition being O.P.No.7 of 2001 on three grounds viz., firstly; disqualification of the 1st respondent being the father of three children by the date of his nomination, secondly; being a convict in a criminal case

and thirdly; resorting to malpractice in the process of election.

3. The 1st respondent filed counter resisting the election petition. The learned Election Tribunal formulated the following points for determination :

1. Whether the last child of R1 was born subsequent to the cut off date namely 29-05-1995?
2. Whether R1 suffers disqualification by virtue of the conviction and the sentence?
3. Whether the petitioner established the malpractices etc., so as to order recounting of the votes?
4. To what relief?

4. To substantiate his case, the petitioner examined himself as P.W.1 and examined one A.V.V. Bhadra Rao, Municipal Commissioner, Vikarabad as P.W.2 and one Dr. B.Vijayia Nirmala as P.W.3 and marked seven documents as Exs.A.1 to A.5 and Exs.C.1 and C.2. 1st respondent examined himself as R.W.1 besides examining one M. Sarojini as R.W.2 and marked four documents as Exs.R.1 to R.4.

5. The learned Election Tribunal on considering the evidence brought on record and on hearing the counsel for both parties, held all the issues against the petitioner and thereby, dismissed the O.P. by an order dated 17-10-2003. Hence the writ petition.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st respondent.

7. The learned counsel for the petitioner submits that the Election Tribunal has not correctly appreciated the evidence brought on record and thereby, erred in dismissing the application. He further submits that Exs.C.1 and C.2 being the public documents, a presumption is to be drawn with regard to the correctness of entries. There is under section 35 of the Indian Evidence Act. According to him, the trial Court has not appreciated the entries made in Exs.C.1 and C.2 in a right perspective and thereby erred in recording a finding with regard to date of birth of third child of respondent No.1.

8. The learned counsel for the 1st respondent supported the findings recorded by the Election Tribunal.

9. Though the petitioner challenged the election of the 1st respondent on three grounds, the learned counsel for the petitioner during the course of arguments confined his submissions with regard to the 1st ground i.e., 1st respondent having more than two children as on the date of nomination and thereby, he suffers disqualification under section 19 (3) of the A.P. Gram Panchayat Act, 1994. Therefore, the issue that is to be resolved in this case is whether the 3rd child of the 1st respondent has born on 14-06-1995 or not?. The petitioner has filed election petition on the ground that the 3rd child of the 1st respondent has born on 14-06-1995 and thereby the 1st respondent incurred disqualification to contest for the post of Sarpanch in view of the provisions of section 19 of the Gram Panchayat Act. To prove that the 3rd child of the 1st respondent has born on 14-06-1995, the petitioner examined himself as P.W.1 and examined one A.V.V. Bghadrarao, Municipal Commissioner, Vikarabad as P.W.2 and examined one Dr.B.Vijaya Nirmala as P.W.3 and marked Ex.A.4 Birth Certificate and Ex.C.1 Immunization register of PHC, Ramachandrapuram and Ex.C.2 entries at page Nos.38 and 39 of Ex.C.1.

10. P.W.2 is the witness to speak of the entries in Birth and Death Register pertaining to the year 1995. It is admitted by him in the cross-examination that the entries in Birth and Death Register contain corrections with regard to the name of the father of the child and even sex of the child. I deem it appropriate to refer the relevant portion of the cross-examination of P.W.2 and it is thus :

> "By seeing the births and deaths register, I cannot say who and when the application for issue of birth certificate of the above child was made to us. (Witness adds) Signature of the applicant is found against the entries, who applied for the issue of birth certificate. I cannot say who applied for such certificate. My office has no record to show that Ex.A.4 was issued by my office. It is true that the letter "M" ('male') is re-written as "F" ('female') in the said entries in the register. It is true that the word "Mahipal Rao" is re-written as "Mahipal Goud" in the register. I cannot say if the signature of the Commissioner as against the registration No.372 is not tallying with the signature of the Commissioner as against the registration No.386. It is true that the total number of children including the present child is shown as four. I cannot say to whom my office issued birth certificate of the present child. I cannot say if Ex.A4 was not issued by the then Municipal Commissioner. Generally, our office puts initials wherever there are over writings. It is true that there are no initials of the concerned in respect of the over writings referred to above."

11. It is crystal clear from the evidence of P.Ws.1 and 2 that the birth and death register contain the corrections with regard to the father of the child and sex of the child. The author of the entries is not examined to explain the corrections. The

learned Election Tribunal having noticed these corrections and lacunas in the evidence on record, refused to place reliance of Ex.A.4 Birth certificate. I do not see any reason to interfere with the finding recorded by the Election Tribunal in this regard. The next document available for the petitioner is to show that the birth of the 3rd child of the 1st respondent was on 14-06-1995 is Ex.C.2 i.e., entries at page Nos.38 and 39 of Ex.C.1.

12. P.W.3 has been examined to prove the entries. It is admitted by him in the cross-examination that he has no personal knowledge of the entries made in Ex.C.2 entries. The author of the entries in Ex.C.2 has not been examined as witness. The Election Tribunal considered this aspect and thereby, refused to place any reliance on these entries. Except these two documents, there is no other evidence to show that the 3rd child was born to the 1st respondent on 14.06.1995. The learned Election Tribunal refused to place reliance on these two documents by giving cogent and convincing reasons. Therefore, I do not see any valid ground to interfere with the well reasoned order passed by the learned Election Tribunal.

13. Accordingly, the writ petition is dismissed. No costs.

_____

Justice B. SESHASAYANA REDDY

Date : 14-12-2005.

Dvs

HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITION No.23102 OF 2003

Dated 14-12-2005